SLOAN KNOCKS OUT CONTESTS

Decides That There was No Malconduct On Part of Election Judges In Prescott Precinct, North---Effectually Disposes Of Suits.

(From Tuesday's Daily)

Judge Sloan yesterday afternoon rendered a written decision effectually disposing of the election contests filed by R. P. Talbot against the present District Attorney, R. E. Morrison, and the suit filed later by Roland Mosher aginst J. C. Bradbury, on the same grounds.

The decision in full follows:

The statute is specific in designating the grounds upon which an election may be contested. A contest is wholly the creature of the statute. Unless, therefore, the statute gives the right it does not exist. No ground except such as may be specifically provided or such as may be fairly inferred from the statute, may be considered.

Malconduct on the part of the Board of Judges is made a ground of contest. As I construe the word "malconduct" as used in the statute, it means the doing of any act, fradulent in its character, or the failure to do some act mandatory in its nature, from which fraud may be inferred.

In the case of Johnstone vs. Robertson, our Supreme Court held that the holding of an election in a precinct at a place other than that which was designated by the Board of Supervisors renders the election in such precinct void. The facts as reported in the opinion do not show what ground of contest was alleged by the contestant. The Court followed the decisions of the Supreme Court of California construing the same statute, and, as it has been held by the Supreme Court of California that the changing of the place of holding the election by the Election Board from that designated by the Board of Suprevisors to some other place amounts to malconduct, it is fair to presume that malconduct on the part of the Board of Judges was one of the grounds set up by the contestant. It may very well be that the change of the place of holding the election by the Board of Judges from that designated by the Board of Supervisors or by the Justice of the Peace, as the case may be, would amount to malconduct, in that it is the mandatory duty of the Board to hold the election at the place designated, where it is possible to do so, and the failure to comply with its mandatory duty in this regard might well be said to be constructive, if not actual, fraud.

The Board of Elections is not authorized, except where no Justice of the Peace be in the the precinct, to designate the place of holding the election. Its duty in other regards is specific, and as the statutes do not anywhere say that an election may not be held unless the house or place be designated by the Board of Supervisors, or the Justice of the Peace, it occurs to me that the situation in such a case is similar to the case where it be found, on the day of election, that the place designated can not be used; in the latter case it is generally held by the authorities that the Board of Election may establish a polling place and proceed with the election, which will be valid unless, perhaps, it appears that a considerable number of electors of the precinct are prevented thereby from voting. Instead, therefore, of it being malconduct on the part of the Board of Elections to hold the election, under the facts set up in the complaint, it occurs to me that it was its mandatory duty to hold such election, and to select and provide a place for such election, if none was otherwise provided.

The object sought by the machinery provided for holding elections is to ascertain the will of the people with regard to what persons may hold the offices. It should not be used for the purpose of defeating this will where it has been fairly and freely expressed, and wherever it appears that an election has been held in a precinct duly established and conducted by the officers duly and regularly appointed for such purpose, it must be presumed that there has been a full, fair and free expression on the part of and a full vote of the qualified electors of such precinct, unless it appears that fraud, either actual or constructive, was committed by said Board. Upon principle, therefore, the case of Johnstone vs. Robertson may be distinguished from the case at bar. In the former case the Board of Elections changed the designated place without authority, in the latter case the Board of Elections proceeded with the performance of their duty, notwithstanding a failure on the part of other officers to perform their duty. In my judgment, instead of predicating malconduct on the part of the Board in holding the election under the circumstances in "Prescott precint, North," we should hold that it was their mandatory duty to hold such an election, provided they were able to do so in such a way and at such a place as to insure a fair and full vote of the precinct.

Suppose the Board of Supervisors designate a place, but such place be found, on the morning of election, unavailable for the purpose, would it not, under those circumstances, be the mandatory duty of the Board of Elections to hold the election, providing another suitable place be found for such purpose? As I have said before, there is ample authority to sustain this view. In what respect does that case differ from this where it appears that no place was designated by anyone authorized to make such designation or to give notice thereof? I consider the two cases analogous.

I, therefore, conclude that the holding of the election by the Board of Electors in "Prescott precinct, North" was not in itself malconduct, and, as no other ground appears in the complaint, the demurrer must be sustained, and it is so ordered.

R. E. SLOAN, Judge.

(From Sunday's Daily.)

In the election contest instituted by R. P. Talbot in an effort to oust District Attorney Morrison, and in answer to the demurrer of the contestee, Judge Sloan, in the District Court, yesterday, brought the matter down to the issue of whether the holding of the election by the Judges in Prescott precinct, North, and the certifying to the vote in that precinct was malconduct within the meaning of the statute.

The Judge reserved his decision on the demurrer until a future date. His oral opinion and remarks in full follow:

The demurrer in this case has been considered somewhat hurriedly owing to the fact that the Court was engaged the greater part of yesterday, and but little opportunity has been given for consulting authorities on the subject.

Under the decision in the case of Johnstone vs. Robertson, the demurrer presents but one question, and that is whether any ground of conflict is alleged or set up in the complaint. The grounds of contest provided for by paragraph 2414 of the Revised Statutes are four, but two of these, however, can possibly appertain to this contest. The first is for "Malconduct on the part of the Board of Judges or any member thereof, or on the part of the Board of Canvassers or any member thereof." The fourth arises on the question of illegal votes. Considering the last first:

I hold that an illegal vote has a precise meaning, and does not appertain to the counting of votes or the reception of the votes of a precinct where some mandatory requirement of the statute has been disregarded which controls the officers of the election. It has reference to some disqualification on the part of the voter himself, or some misconduct on his part which renders his vote illegal, as for instance, where he mutilates his ballot or puts some designating mark on his ballot, or in some other way disqualifies his vote. So, if there be a good ground of contest set up in the complaint it must arise under the first provision or the first subdivision of the paragraph which I have read, viz: "Malconduct on the part of the Judges or any member thereof, or on the part of the Board of Canvassers or some member thereof."

It cannot be said that the reception of the votes of a precinct where the place of holding the election had not been designated in any manner provided by law, or when the election was held in some other place than that designated, is misconduct on the part of the Board of Canvassers. As I construe the statute, there is no provision by which a certificate is sent up by the Board of Election with the vote to the effect that the polling place that was designated by the Board of Supervisors, or by the Justice of the Peace, or by the Judges of the Election, as the case may be. It would be their duty to receive the vote, as certified to by the election officers, without regard to the place of holding the election, and the counting of the votes in such case cannot be misconduct on the part of the Board of Canvassers. Its duty is in this regard ministerial. No discrimination is permitted in that regard. It is not authorized to hear testimony or entertain objections to the reception of any votes upon that ground. So the whole question must be determined under the first provision of the paragraph and, whether the ground alleged in the contestant's complaint amounts to misconduct on the part of the Board of Judges. The complaint alleges that the Board did not, fifteen days prior to the election, designate the place for holding the election in Prescott precinct, North, nor did the Justice of the Peace, and it is alleged that there was a Justice of the Peace, qualified and acting, of the precinct, designate such place within two days before the election.

Let us look at the duty of the Judges of the Election in such a case Paragraphs 2305 and 2306 read as follows:

"The Board must, at least fifteen days prior to an election, issue its order designating the house or place within each precinct where the election must be held."

"If the Board fail to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the Justice of the peace in the precinct must, two days before the election, and by an order under his hand (copies of which he must at once post in three public places in the precinct), designate the house or place, or if there be no Justice of the Peace there, the Election Board, by similar notices posted as in this section provided, may designate the place."

It all amounts to this: that if the Board does not designate the place then it is the mandatory duty of the Justice of the Peace to designate the place, provided there be a Justice of the Peace in the precinct. If there be a Justice of the Peace then the Board of Election has no power to designate the place, because the statute does not give it the power. If there be no Justice of the Peace, then it is mandatory on the Board of Election to designate the place.

It has been held in California, under a statute similar to ours, that the holding of the election at a place different from that designated by the Board of Supervisors or Justice of the Peace is malconduct on the part of the Judges, but I do not find any authority to sustain the proposition that where the place was not designated by the Board of Supervisors or by the Justice of the Peace, in a precinct where there is a Justice of the Peace, will amount to malconduct on the part of the Election Board, and that is just the point which is presented here. It appears in the complaint that there was a Justice of the Peace in the precinct, therefore the Board of Elections had no power to act in the premises. The failure of the Board to act was not malconduct in that regard. The question is, was the holding of the election by the Judges and the certifying to the vote in that precinct malconduct within the meaning of the statute?

I confess that I have not been able to reach a conclusion on that question in the short time I have been able to give to it. Owing to the short time the Court has at its disposal before the Supreme Court meets I have concluded to reserve my decision on this demurrer, and if there are other law questions arising under the pleadings, or issues of fact, counsel may present them. In the meantime, I shall reserve my ruling upon this demurrer.

NEW FAST TRAINS.

NEW YORK, Jan. 5.—Arrangements have been completed for the inauguration tomorrow of a new fast train service between this city and New Orleans. The trains will be two in number and will be run over the Pennsylvania, Louisville & Nashville, Southern and Atlanta & West Point railways.

WEEK OF PRAYER.

NEW YORK, Jan. 5.—In pursuance of a custom inaugurated some years ago by the Evangelical Alliance of America, the coming week will be observed as a "Week of Prayer," by the churches of more than a dozen different religious bodies.

OLSEN THINKS HE WILL SOON GET FUEL OIL

Returns To Salome From His Los Angeles Trip

Prescott Engineers Are Working In That District

(From Tuesday's Daily.)

Special Correspondence.

SALOME, Ariz., Jan. 6.—E. J. Olson, superintendent of the Harqua Hala mine, returned today from Los Angeles, where he went the latter part of December to secure the fuel oil his company so badly needs to begin operations. Mr. Olson interviewed all the oil men in Los Angeles, and as many railroad men as he could find, and pulled all the wires he could lay his hand to; was finally compelled to fall back upon his own powers of persuasion, and wore a broad smile as he got off the train at Salome, believing that they had not been used in vain. He has reason to believe that the oil will be coming by the end of next week and that he will be able to start his fires and run the stamps of the old Harqua Hala again.

Believes In District.

On the same train arrived Ernest A. Haggott and Park Latimer of Prescott, who are here on engineering business. They both spent the day in Salome, and Sunday morning took an early start for the Bill Williams country, to inspect and report upon a property which is now being developed by a company working from Wenden, as the nearest base of supplies. When asked if he did not think the Bill Williams properties were a far cry at this time, with the railroad so distant, and transportation so difficult, Mr. Haggott recalled the early days of the Old Dominion mine at Globe, from 1888 to 1895, when it was seventy miles from the nearest railway point on the Southern Pacific, at Bowie, and roads often impassable, when coke was $44 per ton laid down at the mine, and copper was 11 cents a pound. With the railroad now within twenty-five to thirty-five miles of the Bill Williams district, from Wenden or Salome, and twenty miles or less by another avenue of approach, from Bouse station, at the end of the A. & C. line, and with copper at 23 cents, he was willing to be quoted as believing the district was well within the future possibilities.

Development Work Progressing.

The development work on the Ironwood & Arizona is progressing well. This is the property which has been known for the last six or eight years as the Griffin property, having been located by the Griffin brothers, who have worked it and prospected it is much as their means would allow. In some years they have not been able to do much more than the work required for the assessment, but have held their title clear to their group of claims, extending a mile and a half along the vein. The new development company consists of that group of bankers in Ironwood, Mich., who a year ago took over the Harqua Hala, and finding it to still have the bonanza values attributed to the original mine, thought to take a chance with another property in the same region. It is, in truth, a great copper dyke; on the surface, while still carrying copper values, and a few dollars in gold, the ore is mostly leached out. It is confidently expected that water will be reached at 200 feet, but the company will not hesitate to go 600 feet for it, if necessary. It is easy ground to work, and the single compartment shaft will be sunk with a right good will. When water is reached, the leaching process stops, and the great body of sulphides will be found beneath. G. L. J.

SMITH'S FATHER DIES.

(From Sunday's Daily.)

Acting Clerk of the Board of Supervisors J. H. Robinson received a telegram yesterday from Clerk of the Board J. W. Smith which conveyed the sad news of the death of Mr. Smith's father, in Wichita, Kan. Deceased was aged about 77 years. His remains will be interred in Wichita today. Mr. Smith is expected home next week.

OVER $100,000 SAVED COUNTY

Statement of Expenditures By Board Of Supervisors For 1906 Shows Big Decrease Over Statement For 1905--Some Interesting Figures.

J. H. Robinson, late Clerk of the Board of Supervisors, has completed a statement of the expenditures of Yavapai county for the year 1906, as shown by the books in the office of the Board, which more than favorably compares with the expenditures of the Board for the corresponding period in 1905, a large decrease in expenditures for the year just passed being noticeable.

In the form of recapitulation the statement follows:

Warrants drawn on Expense Fund	$ 75,704 92
Orders drawn on General Fund (taxes refunded)	796 05
Warrants drawn on Road Fund	10,263 62
Sale of Road Tax Receipts (expended)	4,247 85
Total Expenditures of the Board of Supervisors, all Sources	91,012 44
Expenditures through other sources and not audited by the Board of Supervisors—	
Territorial Treasurer (Territorial taxes)	60,445 01
Redeemed Road Warrants (with interest, 10 per cent)	278 17
Territorial Treasurer, Yavapai County Refunding Bond, interest on Ry. Bonds	14,328 82
Territorial Treasurer, Yavapai County Refunding Bond, interest other funded debt	2,608 18
Yavapai County Redemption Fund, interest Bonds, series 1888	1,954 06
Court Orders (Orders Dist. Court Criminal prosecution)	2,276 65
Bonds Redeemed, Yavapai County Redemption Fund, series 1888, Nos. 107 to 143, inclusive, bearing 7 per cent interest	37,000 00
General School purposes (warrants drawn by the Supt. of Schools, Current School expense)	48,396 42
Teachers' Institute Fund (warrants by Supt. of Schools)	25 00
Total Expenditures for all County purposes	258,324 15
Bonded and High School district—	
School Dist. No. 1, B. & I. Fund, interest on bonded debt (warrants drawn by Supt. of Schools	3,100 00
School Dist. No. 1, B. & I. Fund, bonds redeemed (warrants by School Supt.)	5,000 00
School Dist. No. 1, High School warrants (drawn by School Supt.)	2,136 51
Total Expenditures for all purposes	$268,560 66

The total expenditures for all purposes, as noted in the Board of Supervisors' statement for 1905, amounted to $362,425.26, showing a difference of $93,854.60, this being the sum saved the county over last year, despite the fact that in the 1906 report was embodied $3,000 donated to the San Francisco earthquake sufferers, and some $3,403.34 election expenses this year which did not occur last year, so that in reality the expenses this year were some $100,257.94 less than last year.

The total Sheriff's fees for 1905 were $20,488. For 1906 they amounted to only $14,472.05.

Total expenditures for criminal prosecution in 1905 amounted to $35,381.53; in 1906, $28,209.87.

A noteworthy item in the statements of 1905 and 1906 is that the total amounts of warrants drawn on the expense fund only vary $7.82. In 1905 this item amounted to $75,697.10, while in 1906 it was $75,704.92. As stated before the increase in this item for the year just passed was occasioned by the donation to the earthquake sufferers, and the election expenses, neither of which items of expense occur in the report for 1905.

GIRL SOLICITING ALMS FOR WOODEN LEG.

(From Sunday's Daily.)

After spending Friday afternoon and yesterday forenoon here soliciting alms with which to purchase an artificial limb, a one-legged girl, whose name was not learned, but who claims to hail from Lowell, Cochise county, left here yesterday on the afternoon northbound train, after being notified by the City authorities that it was contrary to the ordinances to solicit alms on the streets.

After being informed by a police officer that she should secure a permit from the Mayor if she desired to continue her work any longer, she interviewed Mayor Goldwater at his store, but it is not known with what result. Her subsequent actions, however, indicated that her request was not granted, as she immediatgly left for the depot and boarded the train en route for the north.